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71-1622

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1971

No.

JAMES F. HOLLAND

Petitioner

v.

ELIZABETH JANE HOLLAND

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971
No.

JAMES F. HOLLAND
Petitioner

v.

ELIZABETH JANE HOLLAND
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The petitioner, James F. Holland, prays for a writ of certiorari to review the orders of the Supreme Court of Ohio entered March 16, 1972, overruling his motion to certify and dismissing, sua sponte, his appeal of right from the judgment entered on December 6, 1971, by the Court of Appeals for Franklin County, Ohio, affirming the judgments of the Court of Common Pleas (Division of Domestic Relations), Franklin County, Ohio in Case No. 140,522.

OPINION BELOW

The Supreme Court of Ohio wrote no opinion. The Court of Appeals for Franklin County, Ohio, rendered a written decision on November 2, 1971 (Appendix A, *infra*, pp. 12-25).

JURISDICTION

The orders of the Supreme Court of Ohio entered on March 16, 1972, overruling the petitioner's motion for an order

directing the Court of Appeals for Franklin County, Ohio, to certify its records (Appendix B, *infra*, p. 26) and dismissing, sua sponte, the appeal of right (Appendix C, *infra*, p. 27) are attached hereto. The jurisdiction of this Court is invoked under Rule 19 and 28 U.S.C. 1257 (3), which provide for review of final judgments rendered by the highest court of a state by writ of certiorari "where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States."

QUESTION PRESENTED

Does an order of a state court appointing trustees of petitioner's property and assigning them obligations with respect to the enforcement of such order in a divorce and/or alimony proceeding where such court lacks jurisdiction to appoint trustees of a litigant's property, deprive petitioner of his property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States?

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of relevant constitutional and statutory provisions involved herein is contained in Appendix D, *infra*, p. 28. The relevant provisions are:

Fourteenth Amendment to Constitution of the United States;
§ 2735.01 of the Revised Code of Ohio;
§ 3105.20 of the Revised Code of Ohio.

STATEMENT OF THE CASE

On February 18, 1969, Elizabeth Jane Holland, hereinafter called respondent, filed her petition in the Court of Common Pleas, Franklin County, Ohio against James F. Holland, herein-

after called petitioner, praying that she be awarded temporary and permanent alimony; that she be awarded custody of the minor children; and that she be awarded temporary and permanent support money and expense money. Thereafter, on October 30, 1969, by leave of court, the respondent filed an amended petition for the first time asking that she be awarded an absolute divorce from the petitioner; that certain agreements entered into by the petitioner be set aside; and that a constructive trust be imposed upon the funds derived from the sale or liquidation of assets earned by the petitioner.

On May 20, 1970, counsel for respondent presented his version of what was to be an agreed judgment entry, without approval of counsel for petitioner, to the trial court. The Court signed the entry and filed it on the same day. ¶ 16 of the decree reads as follows:

> "16. During the period that defendant has any obligation to the plaintiff under this Decree, the defendant shall place all of the stock in Granville Development Corporation in trust for the purpose of securing these obligations. No further stock shall be issued by said corporation. So long as defendant makes payments in accordance with this Court Order, the trustees shall pay to defendant any and all income of this trust and the defendant shall have the full power to guide the investment of the money.
>
> "The Court reserves the right to invade the income or principal or to make any order with regard to the assets of the Corporation and trust in order to compel the payment of defendant's obligations set forth in this Decree, and the trustees shall not be permitted to pay over to the defendant any invasion of principal while these obligations still exist. The Court also reserves the power to release the defendant's stock from the trust, upon application of the defendant, for cause shown that security is no longer necessary."

On the 7th and 8th days of January, 1971, the trial court heard respondent's charge of contempt against petitioner. At that time, the Court, finding that petitioner had sold his interest in C & J Home Builders, Inc., and had used the proceeds to pay outstanding obligations, taxes and arrearage of alimony and child support, and that his income was then $150 per week, declined to find the petitioner in contempt so long as petitioner

shall pay $60 per week "starting with your next paycheck." During this contempt proceeding, the trial court made the following observations:

> " *** That leaves me to the next thing; and it is now, I take it, you are just a working man working for a living. And, you have testified you make a hundred fifty bucks a week, you aren't entitled to any $700 payments yet for the building of houses, so about all I can do is handle it on that basis. And, the first thing I am going to do is appoint three trustees, hopefully one person that has some knowledge of real estate and one person who probably ought to be an attorney and one person who ought to have some experience in accounting methods, to take over the stock of Granville Development. Under the decree – And, the decree says the Court may make further orders that are necessary to effectuate the payments here. And, I think that we have reached the point where the Court will appoint three trustees and instruct them to dispose of the property held by Granville Development for the best price available. *** "

Thereafter, on February 23, 1971, the trial court, on its own motion, drafted and journalized a document entitled, "Decision," by which the Court appoints two co-trustees and directs such trustees to assume control of certain stock and orders the petitioner to turn such stock, along with other books, documents and other assets to the trustees (Appendix E, *infra*, p. 30). On March 12, 1971, the petitioner filed his notice of appeal as Case No. 71-84 in the Court of Appeals for Franklin County, Ohio, from this judgment and order of the trial court.

Thereafter, in April of 1971, counsel for the respondent submitted a document entitled, "Journal Entry," to counsel for petitioner, which document was not approved. On April 14, 1971, the document restyled, "Judgment Entry," was signed by the trial court and journalized (Appendix F, *infra*, pp. 31-32), although the trial court lacked jurisdiction since it already had journalized a judgment in the case and an appeal from such judgment had been perfected. Thereupon, the petitioner filed a notice of appeal from the judgment of the trial court rendered on April 14, 1971, as Case No. 71-137 in the Court of Appeals for Franklin County, Ohio. The two cases were consolidated.

On November 2, 1971, the intermediate appellate court rendered a decision affirming the "judgments" of the trial court

(Appendix A, *infra*, pp. 12-25), which was journalized on December 6, 1972 (Appendix G, *infra*, p. 33).

As noted above, on March 16, 1972, the Supreme Court of Ohio overruled the petitioner's motions to certify and dismissed, sua sponte, the petitioner's appeal of right in the aforementioned case.

HOW FEDERAL QUESTION PRESENTED

The constitutional question here involved was first put in issue in the briefs before the Supreme Court of Ohio in Case No. 72-40.

REASONS FOR GRANTING THE WRIT

A. *Introduction*

The concept of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution has both procedural and substantive aspects. See, *Albritton v. City of Winona*, 181 Miss. 75, 178 So. 799, 115 A.L.R. 1436 (1938); 16 Am. Jur. (2d) 941, Constitutional Law, § 548. Substantive due process has been roughly defined as "the constitutional guaranty that no person shall be deprived of his life, liberty, or property for arbitrary reasons." 16 Am. Jur. (2d) 946, Constitutional Law, § 550. Substantive due process affords citizens and property holders of freedom from arbitrary action.

The principle of due process had its origin in England as a protection to individuals against arbitrary action on the part of the Crown. 16 Am. Jur. (2d) 933, Constitutional Law, § 543. Clearly, it is a guaranty against arbitrary legislation. *Nebbia v. New York*, 291 U.S. 502, 54 Sup. Ct. 505, 89 A.L.R. 1469 (1934); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 Sup. Ct. 578, 108 A.L.R. 1330 (1937). It also is a protection against arbitrary executive and judicial orders. See, *Panama Refining Co. v. Ryan*, 293 U.S. 388, 55 Sup. Ct. 241 (1934); *McCreery v. Libby-Owens-Ford Glass Co.*, 363 Ill. 321, 2 N.E. (2d) 290, 105 A.L.R. 75 (1936). A state may not by any of its agencies, legislative, judicial, or executive, disregard the constitutional

guarantee of the Fourteenth Amendment to the Constitution of the United States. *United States v. Raines*, 363 U.S. 17, 80 Sup. Ct. 519 (1960); *Ladner v. Siegel Co.*, 298 Pa. 487, 148 A. 699, 68 A.L.R. 1172 (1930); *Shelley v. Kraemer*, 334 U.S. 1, 68 Sup. Ct. 836 (1948); *Barrows v. Jackson*, 346 U.S. 249, 73 Sup. Ct. 1031 (1953); 16 Am. Jur. (2d) 958, Constitutional Law, § 555.

B. *The Ohio Common Pleas Court, Division Of Domestic Relations, In An Action For Divorce, Alimony And Child Support, Lacks Jurisdiction To Appoint Trustees Of The Property Of One Of The Litigants*

Jurisdiction is essential to the rendition of a judgment by a court. Before a judgment can be operative, a court must have jurisdiction to render such a judgment. There is no judicial power without jurisdiction. Judicial power can be exercised only within the scope of jurisdiction and not beyond it. If a court transcends the limits which the law prescribes, its acts are utterly void. See, 14 O. Jur. (2d) 511, Courts, § 94, and cases cited therein. The trial court, in the case at bar, lacked jurisdiction to appoint trustees of the petitioner's property.

The procedures for the creation of a trust are well established. For example, Ohio always has recognized the right of the owner of property who is *sui juris* to create a trust. See, *Douglas v. Hubbard*, 91 Ohio App. 200, 107 N.E. (2d) 884 (1951); *Flanders v. Blandy*, 45 Ohio St. 108 (1887); *Thomas v. Dye*, 70 Ohio L. Abs. 118, 127 N.E. (2d) 228 (C.A., 1954); 53 O. Jur. (2d), Trusts, § § 24, 25. The owner of property may create a trust by transferring his property to a trustee setting forth the beneficiary and the trust purpose. *Huntington National Bank v. Roan*, 36 Ohio L. Abs. 291, 43 N.E. (2d) 769 (C.A., 1931); 53 O. Jur. (2d), Trusts, § 26. An assignment of property for the benefit of creditors to pay debts has been held to create a trust. *Johnson v. Sharp*, 31 Ohio St. 611 (1877); *House v. Vinton National Bank*, 43 Ohio St. 346 (1885); *Wambaugh v. Northwestern Mutual Life Insurance Company*, 59 Ohio St. 228 (1898); 53 O. Jur. (2d), Trusts, § 27. The person who has the entire beneficial interest in property, but is not the legal owner, may create a trust to such property. See, Restatement, Trusts (2d), § 17, Comment H; 53 O. Jur. (2d), Trusts § 28. One of the methods most frequently used to create a trust is by

testamentary disposition of real or personal property. *Thomas v. Dye*, supra.; 53 O. Jur. (2d), Trust, § 29. A trust may be created by an agreement or contract. 53 O. Jur. (2d), Trusts, § 30. A trust may be created by compliance with a statute authorizing the appointment of a trustee. 53 O. Jur. (2d), Trusts, § 32.

There is no statute in Ohio authorizing the Court of Common Pleas, Division of Domestic Relations, to appoint a trustee in a divorce and/or alimony proceeding. In *Marleau v. Marleau*, 95 Ohio St. 162 (1917), the law of Ohio with respect to the equity power of a court in a domestic relations case was pronounced in the court's syllabus as follows:

> "A proceeding for alimony does not invoke the equity powers of the court but is controlled by statute. The court is only authorized to exercise such power as the statute expressly gives, and such as is necessary to make its orders and decrees effective."

In so declaring, the Court followed its earlier decision in *DeWitt v. DeWitt*, 67 Ohio St. 340 (1902). See, *McQuain v. McQuain*, 55 Ohio App. 505, 9 N.E. (2d) 893 (1937); *Mosey v. Hiestand, et al.*, 35 Ohio L. Abs. 544, 42 N.E. (2d) 186 (C.A., 1941).

As stated by the Court in *McQuain v. McQuain*, supra –

> "The courts of Ohio have been long committed to the rule that, in divorce and alimony proceedings, the power of the court to award alimony is controlled entirely by statute, and it has no authority to exercise general equity powers in such actions. It is further established that 'proceedings in alimony were not chancery cases within the meaning of our present Constitution, and that the incidental relief by way of injunction did not convert the character of the proceeding into one of chancery jurisdiction.' *Durham v. Durham*, 104 Ohio St. 7, at page 9, 135 N.E. 280. And see *Marleau v. Marleau*, 95 Ohio St. 162, 115 N.E. 1009, and *DeWitt v. DeWitt, 67 Ohio St. 340, 66 N.E. 136.*"

Clearly, divorce and alimony actions are strictly actions at law.

It is true that § 3105.20, Revised Code, expressly provides, *inter alia*:

> "In any matter concerning domestic relations, the court shall not be deemed to be deprived of its full equity powers and jurisdiction."

However, the Supreme Court in *Haynie v. Haynie*, 169 Ohio St. 467, 159 N.E. (2d) 765 (1959), concluded that while § 3105.20, Revised Code, does not deny the Court of Common Pleas in domestic relations matters, the exercise of its full equity powers and jurisdiction, there must be a statutory basis upon which to exercise those powers before they can be put into play. Thus, it is possible that in the same petition and coupled with an action for divorce and/or alimony, a distinct action in equity could be pleaded, thereby invoking the equitable powers of the court. However, this was not done in the case at bar.

Notwithstanding the fact that the trial court spoke expressly in terms of "trustees" in ¶ 16 of the decree of May 20, 1970, and in terms of "trustees" at the contempt hearing on January 8, 1971, and in terms of "trustees" in the judgment of February 23, 1971, and in the document of April 14, 1971, the Court of Appeals, apparently seeking the intention of the trial court from something other than the words used by the trial court, treats the trial court's appointees as receivers. After some general observations respecting receivers, the Court of Appeals reaches the undisputed conclusion that the appointment of a receiver in Ohio is statutory and is available only in those types of cases and in those circumstances set forth in § 2735.01, Revised Code.

A perusal of § 2735.01, Revised Code, fails to disclose any ground stated therein for the appointment of a receiver or trustee in a divorce and alimony proceeding. The Court of Appeals suggests that subsections (C) and (D) of § 2735.01, Revised Code, relating to judgments, may be appropriate. However, the Court does not indicate how the decree of May 20, 1970, for periodic payment of alimony and child support can be deemed a judgment within the contemplation of the cited subsections. It is well established, however, that before execution can issue on a decree of alimony that the arrearage must first be reduced to judgment. Clearly, an order to make monthly alimony payments is not a judgment against which execution may be levied.

It is true that the author of the dissertation on divorce and separation in 18 O. Jur. (2d) 57, § 128, makes the assertion that "When necessary, the court will appoint a receiver to take charge of the property of the defendant, to secure the income

to satisfy the decree for alimony." This statement is premised on the decision in the case of *Antonia Questel v. Nicholas and John Questel*, Wright (Ohio) 492. However, as pointed out by the Court in *McQuain v. McQuain*, 55 Ohio App. 505, 9 N.E. (2d) 893 (1937), a careful reading of the *Questel* case will disclose that it was not one for divorce and alimony, but was a case in chancery asking that a fraudulent conveyance be set aside and that a receiver be appointed pending the decision.

Where there is an action for divorce and/or alimony only, as in the case at bar, the general equity powers of the court are not invoked. Consequently an appointment of a trustee to take charge of property of the litigants is not authorized. As this Court will observe, *the Ohio Court of Appeals does not find that the trial court is authorized to appoint trustees to take charge of the defendant's property*. The Court of Appeals, however, on a general doctrine that every court has the inherent power and authority to enforce its judgment if it had jurisdiction to make it, reaches the curious conclusion, notwithstanding the facts (1) that the trial court did not purport to create a trust or to appoint trustees of the defendant's property in the decree of May 20, 1970, and (2) the language of the decree which contemplates that by agreement of the parties, a trust agreement would be executed (thereby creating a trust in accordance with one of the lawful modes of trust creation), that the trial court had jurisdiction to appoint "third party fiduciaries" to take possession of the assets of the defendant.

Plainly, the trial court in the case at bar appointed trustees of the petitioner's property in a statutory divorce and/or alimony proceeding, which the trial court lacked jurisdiction to do. Consequently, the judgment of the trial court appointing such trustees is null and void and of no effect.

C. *Assuming, Arguendo, That A Court Of Common Pleas, Division Of Domestic Relations, In An Action For Divorce And/Or Alimony, Has Jurisdiction To Appoint Trustees Of The Property Of One Of The Parties To Such Action, Such Authority Is Lost Where, On The Facts, The Court Abuses Its Discretion*

Even if it be assumed, *arguendo*, that the trial court had jurisdiction to appoint trustees of petitioner's property, and

that such appointment was made by proper judgment entry, the petitioner submits that the appointment is unlawful because the trial court abused its discretion.

The record shows that the petitioner sold his stock in C & J Home Builders, Inc. to Mr. Murray in the latter part of September, 1970. The purchase price was $65,000. From this sale price, the petitioner paid to the respondent and her attorney approximately $15,000; he paid Federal Income Tax of $19,000; he paid $2,500 to the corporation for the car that was awarded to the plaintiff by the decree; and he paid attorneys fees of $8,200. Since petitioner received none of the household items by the divorce decree, he bought furniture, washer, dryer, refrigerator, T.V., stereo, household furniture and other items necessary for his housekeeping in the amount of $8,600. During 1969 and 1970, the petitioner had borrowed money on which to live. After the sale of C & J Home Builders, Inc. stock, he paid his indebtedness to Mr. Murray in the amount of $8,000. He has paid his parents the amount owed them, *i.e.*, $2,000. As of January 8, 1971, petitioner had none of the proceeds from the sale of his stock in C & J Home Builders, Inc.

The record shows that the other assets of the petitioner consist of a house on St. Anthony Lane (equity worth $1,500), and fifty shares in Granville Development Corporation. The evidence shows that the sole asset of Granville Development Corporation is land, the title to which is free and clear. Granville Development Corporation has sought to obtain financing for the development of the land, but has been unable to do so because of the language contained in the decree of May 20, 1970. Granville Development Corporation proposes to build apartments on the land. On the day prior to the hearing for contempt, the petitioner submitted a proposal to the trial court which would provide a means of liquidating his responsibility to the respondent under the decree of May 20, 1970.

If the petitioner is required to surrender the stock in Granville Development Corporation to the trustees and they recommend that the corporation be dissolved and the land sold, then not only does the defendant lose the assets which permit him to earn the money required to pay the alimony and child support required by the trial court, but he also will incur a tax liability for which he has no funds to pay. In all reasonableness,

the petitioner should be permitted to retain the stock in Granville Development Corporation; the language of ¶ 16 of the decree of May 20, 1970, should be modified so as to permit him to borrow the money necessary to develop the land and provide the income required to pay for the alimony and child support and other requirements of the decree of May 20, 1970, as well as provide a living for himself. The action attempted by the trial court is to strip the petitioner of all his property, thereby making it impossible for him to meet the obligations of alimony, child support, education payments, etc., as well as to strip him of his own livelihood.

If the appointment of trustees of the petitioner's stock in Granville Development Corporation is sustained, the petitioner's sole source of income will be the employment contract which he now has with Mr. Murray, the owner of C & J Home Builders, Inc., which pays him $150 per week. Obviously, with a weekly income of $150, the petitioner will be unable to make the required payments for the support of his six children, and alimony to the respondent. The appointment of trustees in these circumstances is so unreasonable as to constitute an abuse of discretion and hence unlawful.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

Elizabeth Jane Holland,
Plaintiff-Appellee,
vs.
James F. Holland,
Defendant-Appellant.

Nos. 71-84 & 71-137

DECISION
Rendered on November 2, 1971

MR. HARRY LEWIS,
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LUCAS, PRENDERGAST, ALBRIGHT, GIBSON, BROWN and NEWMAN,
MR. RANKIN M. GIBSON and
MR. ROBERT E. ALBRIGHT,
42 East Gay Street,
Columbus, Ohio,
For Defendant-Appellant.

HOLMES, J.

This matter involves an appeal from a judgment of the Common Pleas Court of Franklin County, Division of Domestic Relations, granting a divorce to the plaintiff-appellee, which judgment included the appointment of so-called co-trustees to assume control of certain corporate stock of this defendant-appellant, such stock being that of the Granville Development Corporation.

The background of this proceeding in brief is that on

February 18, 1969, Elizabeth Jane Holland, hereinafter called plaintiff, filed her petition in the Court of Domestic Relations, Franklin County, Ohio, against James F. Holland, seeking alimony, custody of the minor children of the parties, and support money for the children.

By separate motion, the plaintiff moved the court, and was awarded, a temporary restraining order restraining the defendant from "giving away, destroying, disposing of or encumbering the various real property, insurance policies, bank accounts * * *, and various other business undertakings or interest now owned by the parties herein."

The petition was later amended to additionally seek a divorce from this defendant-appellant. The amended petition also prayed for certain equitable relief which shall be alluded to hereinafter.

On May 20, 1970, a judgment entry entitled "Decree of Divorce" was filed in this matter granting a divorce, and custody of the children to the plaintiff, awarding alimony, and making certain division of the property of the parties.

One of the significant clauses for purposes of this appeal, as included in such decree of divorce, is as follows:

> "16. During the period that defendant has any obligation to the plaintiff under this Decree, the defendant shall place all of the stock in Granville Development Corporation in trust for the purpose of securing these obligations. No further stock shall be issued by said corporation. So long as defendant makes payments in accordance with this Court Order, the trustees shall pay to defendant any and all income of this trust and the defendant shall have the full power to guide the investment of the money.
>
> "The Court reserves the right to invade the income or principal or to make any order with regard to the assets of the Corporation and trust in order to compel the payment of defendant's obligations set forth in this Decree, and the trustees shall not be permitted to pay over to the defendant any invasion of principal while these obligations still exist. The Court also reserves the power to release the defendant's stock from the trust, upon application of defendant, for cause shown that security is no longer necessary."

The court took no further action to appoint trustees or other fiduciaries for purposes of taking dominion over the Granville

Development Corporation stock, as owned by the defendant, until a hearing for contempt for nonpayment of alimony, which hearing took place before the trial court on the 7th and 8th of January, 1971.

The record of such proceedings in contempt will show that the trial court made certain oral findings and observations from the bench to the effect that the facts adduced would show that the defendant was not presently receiving a high level income from any source, but was instead "just a working man working for a living," and making approximately $150 per week. On this basis the court did not find the defendant guilty of contempt. However, the court was impressed with, and commented upon, the necessity of carrying out the terms of the decree regarding the alimony award and arrearages therefor.

Accordingly, the trial court noted that the decree of divorce provided that the court may make further orders that are necessary to effectuate the alimony payments, and that in pursuance thereof he would "appoint three trustees and instruct them to dispose of the property held by Granville Development for the best price available."

Thereafter, on February 23, 1971, the trial court drafted, and journalized, the following decision relating to the matters brought before him in the contempt proceedings:

> "Pursuant to the Decree in the above captioned matter, the Court hereby appoints C. William Malone, 50 W. Gay Street and Kenneth L. Saul, 3784 Astor as co-trustees to assume control of the stock of Granville Inc. Since this stock was ordered held in trust by the Court for the purpose of securing the payments due to the plaintiff under the divorce decree and since Mr. Holland has reported to the Court that he is unable to comply with the Court's order, the trustees should proceed to take control of said stock and the defendant is order to turn over to said trustees all stock certificates, books, records, documents and other assets of Granville Inc. now in his possession.
>
> "The Court hereby directs the trustees to make payment to Mrs. Holland for all arrearages due under the decree and directs the trustees to take whatever action with the Granville stock which would be necessary to most effectively accomplish this purpose. The trustees should recommend to the Court whether it would be best to sell the stock in

Granville Inc. and invest the proceeds from the sale thereof, enter into a contract with other persons or corporations for the development of the property of Granville Inc. which would provide income, or to dissolve the corporation and transfer the land to the trustees which land could then be sold to provide funds for investment.

/s/ J. W. Hill
JUDGE"

On March 12, 1971, the defendant filed his notice of appeal from this decision, and such appeal was assigned case number 71-84 in this court.

On April 14, 1971, the following document entitled "Judgment Entry" was filed in the trial court, which entry was approved by the plaintiff's counsel but not by the defendant's counsel:

"JUDGMENT ENTRY
JOURNAL ENTRY

"This matter came on for hearing on plaintiff's motion and written charges of contempt filed on December 11, 1970; upon the evidence adduced at the hearing and oral arguments of counsel, the Court through its oral decision of January 8, 1971 and its written decision of February 23, 1971, finds it to be in the best interest of the parties to continue the contempt hearing pending defendant's compliance with the Court's instructions for purging himself of contempt; the Court further finds that the defendant is unable to meet his current obligations under the decree of May 20, 1970 and that it is necessary to implement the provisions of paragraph 16 of the decree by appointing two trustees to exercise such authority over Granville Development Corporation as the Court may direct.

"It is, therefore ORDERED that this contempt hearing be continued pending defendant's compliance with the Court's instructions for purging himself of contempt.

"It is further ORDERED that C. William Malone and Kenneth L. Saul be and hereby are appointed co-trustees of the stock of Granville Development Corporation for the purpose of implementing paragraph 16 of the decree rendered in this case on May 20, 1970 and that said trustees shall, subject to further order of this Court:

"1. Assume control of said stock;

"2. Recommend to the Court whether it would be best to sell said stock and invest the proceeds from the sale thereof, enter into a contract with other persons or corporations for the development of the real property of Granville Development which would provide income, or to dissolve said Corporation and transfer its real property to said trustees for the sale thereof to provide funds for investment;

"3. Make payment to plaintiff for all arrearage due under the decree;

"4. Make any other recommendations deemed necessary or desirable to the Court;

"It is further ORDERED that Defendant surrender and deliver to said trustees all stock certificates, books, records, documents and other assets of Granville Development Corporation.

"It is further ORDERED until further order of this Court, that bond of said trustees be and hereby is dispensed with.

/s/ J. W. Hill
J. W. HILL, JUDGE"

The defendant filed a notice of appeal on April 19, 1971 from this judgment entry, and such appeal was given the case number 71-137 in this court.

Both of such cases have been consolidated for the purposes of briefing, presentation, and determination on appeal in this court.

The defendant-appellant cites three assignments of error, which are as follows:

"1. The Trial Court Lack Jurisdiction to Journalize the Purported Judgment Entry of April 14, 1971.

"2. The Trial Court Lacked Jurisdiction to Appoint Trustees of Defendant's Property.

"3. The Trial Court Abused its Discretion in Appointing Trustees of Defendant's Property."

I

In support of his first assignment of error, appellant argues that the written decision prepared by the trial court and

journalized on February 23, 1971, in effect is a judgment, and as such should be found to be that official act of the court from which the appeal is taken rather than the document entitled "Judgment Entry" which was signed by the trial court and journalized by it on April 14, 1971.

A review of the Rules of Civil Procedure, effective July 1, 1970, brings us to the conclusion that the trial court was well within its jurisdiction in journalizing the court's judgment dated April 14, 1971.

Civil Rule 58, prior to amendment, provided as follows:

> "ENTRY OF JUDGMENT. Subject to the provisions of Rule 54(B), upon a general verdict of a jury, or upon a decision announced, the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it. Every judgment shall be specifically designated as a judgment. A judgment is effective only when so designated and when entered by filing with the clerk for journalization. Entry of the judgment shall not be delayed for the taxing of costs."[1]

[1] *Rule 58 was amended effective July 1, 1971. The following language was deleted from the prior rule: "Every judgment shall be specifically designated as a judgment. A judgment is effective only when so designated and when entered by filing with the clerk for journalization."*

It should be noted that the language of the rule, either prior to or after amendment, vested the court with the ultimate responsibility for the preparation of such judgment entry. The rule prior to amendment spoke in terms of "Entry of Judgment" and it would seem to be reasonable that under the language of the prior rule such an entry to be effective as the judgment of the court had to be so designated.

In the instant case, there was a hearing in contempt which took place on January 7th and January 8th, 1971, wherein certain oral rulings were made from the bench and the written decision thereon entered on February 23, 1971.

The formal entry of the judgment encompassing such rulings and decision was journalized in the document of April 14, 1971. Such was in accordance with Civil Rule 58, and such judgment entry constitutes the final appealable order herein.

II

The second assignment of error presents this court with the keystone question of this appeal, and that is whether the Common Pleas Court in a domestic relations proceeding, wherein the plaintiff has been awarded a judgment of divorce and alimony, has the jurisdiction to appoint third-party fiduciaries for the purpose of taking possession of the defendant's property in order to effect the purposes of the court's judgment.

The appellant in his brief recognizes the equitable power granted to the Common Pleas Court in domestic relations matters pursuant to R.C. 3105.20, but yet takes the position that such powers of the court are not invoked in a simple action for divorce, alimony and injunctive relief, unless a distinct action in equity is pleaded.

R.C. 3105.20 is that section of law to be found within the chapter on divorce and alimony which provides for the general equitable powers of the Common Pleas Court in domestic relations proceedings. Such section provides as follows:

> "When it is made to appear to the court of common pleas, or a judge in vacation, that a party is about to dispose of or encumber property, or any part thereof, so as to defeat the other party in obtaining alimony, or that any party to the action or a child of any party is about to suffer physical abuse, annoyance, or bodily injury by any other party therein, the court or judge may allow an injunction, with or without bond, to prevent such action. A party may sell and assign the order for alimony or allowance, after it is made. In any matter concerning domestic relations, the court shall not be deemed to be deprived of its full equity powers and jurisdiction."

The general equitable power as provided by R.C. 3105.20 was discussed in the case of *Clark v. Clark* (1956), 165 Ohio St. 457. The court used the following language, to be found at page 458 of the opinion:

> "* * * Apparently the salutary purpose of the General Assembly was to authorize the trial courts to exercise full equity powers and jurisdiction in adjudicating a complete dissolution of the marriage relationship, including a determination of the rights of the parties to alimony and to a division of property."

The full equity powers of the Common Pleas Court in domestic relations matters relating to the division of property was again recognized, and the law of *Clark v. Clark* approved and followed in the case of *Griste v. Griste* (1960), 171 Ohio St. 160, wherein the plaintiff was seeking custody of the minor children, support and alimony.

In determining the extent of such general equitable power as granted to the Common Pleas Court by the last sentence of R.C. 3105.20, it might be well to refer to some of the other specific provisions of such section.

Speaking of the injunctive powers of the Common Pleas Court in a domestic relations matter, where certain injunctive orders were being appealed, the court in *Petrus v. Petrus* (1964), 176 Ohio St. 305, stated as follows at page 308 of the opinion:

> "It is thus clear that the legislative intention was to clothe the Common Pleas Court, or a judge thereof in vacation, with full power and authority in domestic relations cases to preserve the status quo existing at the time of the filing of the petition until such time as the court can dispose of the alimony or support problems or a division of the property. The property or property rights, including bank deposits, stocks, bonds and other assets, may thus be kept intact and readily available for such disposition or transfer as the court shall ultimately decide to be proper. Otherwise, a spouse in control of transferable property could effectively defeat the rights of the other spouse and delay, circumvent or greatly impede the court in making proper orders as to alimony, support or a division of the property."

The injunctive process in a domestic relations proceeding is generally a provisional remedy invoked in order to maintain the status quo of the parties and their assets until such time as the court may make a determination of the rights of the parties, and until the property may be divided and distributed in accordance with such determination.

However, the provisional nature of such remedy would not preclude its effectiveness beyond the point of decree. Once granted, the terms of such an injunction may be effectively enforced until the provisions of the decree are complied with, be it during the pendency of the proceeding prior to judgment, or thereafter.

Can it reasonably be questioned that the court has the power

to make any appropriate order relating to the full protection, management and distribution of the assets encompassed within the injunctive order? We think not.

If such be so, may not the court utilize its equitable powers in order to delegate such responsibility to others? We think that it can.

The fact that such others as designated by the court to take dominion over certain property of the parties are termed trustees, rather than some other form of fiduciary or representative of the court, should not defeat the purposes of the appointment.

However, it would appear that the more correct designation of such individuals in whom the court has vested the authority to take control of the assets, for purposes of effectuating the court's judgment, would be receivers rather than trustees.

It is stated in 46 Ohio Jurisprudence 2d, Receivers, at section 2, that:

> "A 'receiver' has been defined as an indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or funds in litigation pendente lite, when it does not seem reasonable to the court that either party should hold it. * * * "

It has been held that a receivership is a provisional, equitable remedy in the nature of an injunction. The following statement is to be found in *Cinn. S & C. Rd. Co. v. Sloan* (1876), 31 Ohio St. 1, at pages 7 and 8:

> "A provisional receivership is, in effect, an injunction, and something more stringent still. * * * The appointment of a receiver is an equitable remedy, and bears a similar relation to courts of equity that proceedings in attachment bear to courts of law. Hence the appointment of a receiver has been said to be an equitable execution. * * * "

A receiver is an administrative arm of the court who takes charge of the assets of the parties for the purposes of conserving them to the ends of equity. A receiver does not take title to the property but merely the possession and the preservation and management of such pursuant to court order.

To such effect, we find the following at section 4 of 46 Ohio Jurisprudence 2d, Receivers:

> "The general proposition is well established that a receiver is merely a ministerial officer – a servant, agent, creature, arm, or

> hand – of the court from which he received his appointment, for the benefit of whoever may be ultimately determined to be entitled to the property, and derives his function solely from that source. * * * "

The appointment of a receiver in Ohio is statutory, Chapter 2735, Revised Code, and is available only in those types of cases and in those circumstances as set forth in the statute. Basically such right is granted within R.C. 2735.01 to the Supreme Court, the Court of Appeals and the Common Pleas Court in actions to vacate fraudulent purchases of property, actions by creditors to subject property or funds to his claim, actions between partners, or others jointly owning or interested in property.

More pointedly applicable to this matter are subsections (C) and (D) of R.C. 2735.01 which provide that the court may appoint a receiver in the following instances:

> "(C) After judgment, to carry the judgment into effect;
> "(D) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment."

The appellant relies, in the main, upon the case of *McQuain v. McQuain* (1937), 55 Ohio App. 505. Such case held that neither the divorce and alimony statutes nor the receivership statutes effective at that time would provide the authority for the appointment of a receiver in an action for divorce, alimony and injunctive relief.

We note in reviewing Section 11996 of the General Code, the section which provided for injunctive relief in divorce and alimony proceedings at the time of *McQuain*, that the previously quoted clause providing the general equitable jurisdiction of the domestic relations court had not been enacted. Such clause as contained in the current comparable section, R.C. 3105.20, was not enacted until 1951.

It should also be pointed out in the process of analyzing *McQuain* that the court in construing Section 11894 of the General Code, the receivership statute, which, in the main, was identical to the current R.C. 2735.01, felt that only one subsection might logically be arguable, and that was subsection 6.

Such subsection 6 provided that receivers may be appointed: "In all other cases in which receivers heretofore have been appointed by the usages of equity."

The court concluded however that such subsection 6 could not be relied upon for the appointment of a receiver in that: "Divorce and alimony actions are strictly actions at law, and the liberal language of the statute, 'the usages of equity,' has no application."

Whether or not we agree with this particular holding relative to subsection 6 of Section 11894, General Code, [now subsection (F) of R.C. 2735.01], and parenthetically we state that in light of the general equity powers granted under R.C. 3105.20 we do not, such case not having gone to a judgment on the merits did not allude to the applicability of the subsections giving the court authority to appoint receivers after judgment to carry the judgment into effect.

The appellant claims that the plaintiff has not sought the equitable jurisdiction of the Common Pleas Court which would give rise to the appointment of receivers for the protection of the assets of the defendant.

We believe this position is an incorrect one, in that a review of the plaintiff's amended petition reveals that the plaintiff indeed was seeking the court's equitable relief by way of a preservation of the assets.

We quote the following from the plaintiff's amended petition:

> "Plaintiff further states that defendant, during the year 1969, and following the events which give rise to the request for divorce and alimony, entered into a series of agreements as principal stock holder in the C & J Home Builders, Inc., Granville Development Corporation with Holding Corporation of Ohio and Ermerl, Inc., for the specific purpose of placing the assets of the Corporations mentioned herein, of which defendant is the sole and principal stock holder, from the reach of plaintiff's request for alimony."

The plaintiff then proceeds in her petition to pray the court for a divorce from the defendant; that the prior agreements relating to the property be set aside; "that a constructive trust be imposed upon any funds derived from the sale or liquidation of the assets earned by defendant and transferred by defendant pursuant to the agreements cited herein."

Further, by separate motion, the plaintiff prayed for and was awarded a temporary restraining order prohibiting the defendant's alienation or divestiture of the property of the parties.

Additionally, the plaintiff included the rather standard portion of the prayer to the effect that she sought "further relief to which she may be entitled in law and equity."

We hold that such provisions in the plaintiff's petition and separate motion appropriately called the trial court's attention to the need to preserve the assets for the purposes of satisfying the further orders of the court as the equity of the matter would require.

The equitable jurisdiction of the court was invoked for whatever reasonable action necessary in the premises. The appointment of receivers, or trustees as termed by the court, for the purposes of taking possession of the stock of the Granville Development Corporation, and for purposes of making recommendations to the court relative to the control and possible disposition of the stock, was an act well within such equitable jurisdiction of the trial court.

We feel that there are other reasonable grounds upon which the trial court could validly have based its jurisdiction in the appointment of receivers in this matter.

The general authority of a court to enforce its own judgments may be justifiably argued as a further basis for the jurisdiction of the Common Pleas Court to appoint independent parties for the protection and preservation and management of the assets of the defendant for the purpose of satisfying the decree of divorce and subsequent judgment entry of the court.

As stated in 32 Ohio Jurisprudence 2d, Judgments, at section 755:

> "Every court is said to have inherent power and authority to enforce its judgment if it had jurisdiction to make it * * *. Although ordinarily, judgments are enforceable by execution, upon a domestic judgment there can be exercised all the executory remedies given by the law to procure full satisfaction * * *."

There can be little doubt that the Common Pleas Court may make such division or disposition of the property that it deems to be proper for the full satisfaction of its judgment, *Petrus v. Petrus* (1964), 176 Ohio St. 305.

Here the trial court, in its decree of divorce, had ordered the

defendant to place all of his stock in the Granville Development Corporation in trust for the purpose of securing the obligation owing to the plaintiff under the decree.

The defendant did not place the subject stock in trust as ordered by the court, and only upon noncompliance with such order did the court appoint other parties to take possession and control of the stock for the purpose of carrying out the judgment of the court.

It is our position that if the court may make such equitable disposition of the property and assets of the parties to a domestic relations proceeding, it may also utilize its equitable power to delegate such responsibility to others under the appropriate surveillance of the court.

Based upon all of the above, we hold that the trial court did in fact have jurisdiction to appoint the third-party fiduciaries to take possession of the assets of the defendant for purposes of carrying out the terms of the decree and judgment thereon.

III

This brings us to the third assignment of error to the effect that the trial court abused its discretion in appointing the fiduciaries to take possession and control the defendant's property. More precisely, did the facts and circumstances of this matter warrant the court's taking the rather drastic step to sequester an asset of this defendant in order to protect the equitable interest of this plaintiff?

We feel that under the facts as presented, the trial court was justified in the action taken.

The facts, as reviewed in this matter, evidence a tendency of this defendant to place his assets in a position of unavailability for purposes of satisfying the terms of the decree of divorce as entered by the trial court.

The terms of the decree, and as agreed to by the parties, called for a given amount of alimony to be paid periodically. Such order of the court has not been complied with by the defendant.

It appears that the main income-producing asset of the defendant was his interest in C & J Home Builders, Inc., a solely-owned corporation. The defendant divested himself of

this asset after the decree by selling such asset to a business associate.

Although the trial court found no fraud in this divestiture, there is to be found in the record of the hearing on such matter some questions as to whether full market value was in fact paid to the defendant.

The other major asset as owned by the defendant is his stock interest in Granville Development Corporation, which company is the owner of record of a very valuable tract of land in Franklin County.

All of the factors and elements involved in making a determination of whether to take such equitable protective action were before the trial court. Some of the considerations would reasonably involve the nature of the assets to be controlled, the propensity of the defendant to adhere to, or conversely refuse to comply with, the alimony orders of the court, and any surrounding facts relating to the transfer or divestiture of assets.

In this instance, the major assets still owned by this defendant are stock holdings in the Granville Development Corporation. The possibilities of placing such an asset beyond the immediate reach of the plaintiff, or diverting the potential income therefrom, are rather patent.

The action of the trial court in appointing persons to act for, and on behalf of, the court in the preservation and management of an asset of the defendant, in view of all of the facts and circumstances of this case, cannot be said to be an unreasonable, arbitrary or unconscionable exercise of the court's authority. We find no abuse of discretionary power.

The judgments of the Common Pleas Court of Franklin County, Division of Domestic Relations, are hereby affirmed.

TROOP, P. J., and WHITESIDE, J., concur.

APPENDIX B

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

1972 TERM
To wit: March 16, 1972

Elizabeth Jane Holland,
Appellee,

vs.

James F. Holland,
Appellant.

No. 72-40
MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS for FRANKLIN County TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled, sua sponte.

It is further ordered by the court that the motion to dismiss appeal filed by Appellee be overruled. It is further ordered by the court that the motion for allowance of attorney fees filed by Appellee be overruled.

COSTS:

Motion Fee, $20.00, paid by Rankin M. Gibson.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this _____ day of _____ 19__

_____ Clerk

_____ Deputy

APPENDIX C

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, City of Columbus.	1972 TERM To wit: March 16, 1972
Elizabeth Jane Holland, *Appellee,* vs. **James F. Holland,** *Appellant.*	**No. 72-40** **APPEAL** **FROM THE** **COURT OF APPEALS** **for FRANKLIN County**

This cause, here on appeal as a right from the Court of Appeals for Franklin County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of Court of Appeals for Franklin County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this _____ day of _____ 19__

_____ Clerk

_____ Deputy

APPENDIX D

Fourteenth Amendment, United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2735.01, Revised Code:

A receiver may be appointed by the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, in causes pending in such courts respectively, in the following cases:

(A) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject property or a fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of a party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(B) In an action by a mortgagee, for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt;

(C) After judgment, to carry the judgment into effect;

(D) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satis-

faction of the judgment;

(E) When a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

(F) In all other cases in which receivers have been appointed by the usages of equity.

§ 3105.10. Revised Code:

The court of common pleas shall hear any of the causes of divorce or annulment charged in the petition and may, upon proof to the satisfaction of the court, pronounce the marriage contract dissolved and both of the parties released from their obligations.

Upon the granting of a divorce, on a petition or cross-petition, by force of such judgment, each party shall be barred of all right of dower in real estate situated within this state of which the other was seized at any time during coverture.

"Dower" as used in this section has the meaning set forth in section 2013.02 of the Revised Code.

APPENDIX E

IN THE COURT OF COMMON PLEAS
OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

Elizabeth Jane Holland,
Plaintiff

vs. No. 140522

James F. Holland,
Defendant.

DECISION

Pursuant to the Decree in the above captioned matter, the Court hereby appoints C. William Malone, 50 W. Gay Street and Kenneth L. Saul, 3784 Astor as co-trustees to assume control of the stock of Granville Inc. Since this stock was ordered held in trust by the Court for the purpose of securing the payments due to the paintiff under the divorce decree and since Mr. Holland has reported to the Court that he is unable to comply with the Court's order, the trustees should proceed to take control of said stock and the defendant is ordered to turn over to said trustees all stock certificates, books, records, documents and other assets of Granville Inc. now in his possession.

The Court hereby directs the trustees to make payment to Mrs. Holland for all arrearages due under the decree and directs the trustees to take whatever action with the Granville stock which would be necessary to most effectively accomplish this purpose. The trustees should recommend to the Court whether it would be best to sell the stock in Granville Inc. and invest the proceeds from the sale thereof, enter into a contract with other persons or corporations for the development of the property of Granville Inc. which would provide income, or to dissolve the corporation and transfer the land to the trustees which land could then be sold to provide funds for investment.

/s/ J. W. Hill
JUDGE

APPENDIX F

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO DIVISION OF DOMESTIC RELATIONS

Elizabeth Jane Holland,
Plaintiff,

vs. Case No. 140.522

James F. Holland,
Defendant

JUDGMENT ENTRY
JOURNAL ENTRY

This matter came on for hearing on plaintiff's motion and written charges of contempt filed on December 11, 1970; upon the evidence adduced at the hearing and oral arguments of counsel, the Court through its oral decision of January 8, 1971 and its written decision of February 23, 1971, finds it to be in the best interest of the parties to continue the contempt hearing pending defendant's compliance with the Court's instructions for purging himself of contempt; the Court further finds that the defendant is unable to meet his current obligations under the decree of May 20, 1970 and that it is necessary to implement the provisions of paragraph 16 of the decree by appointing two trustees to exercise such authority over Granville Development Corporation as the Court may direct.

It is, therefore, ORDERED that this contempt hearing be continued pending defendant's compliance with the Court's instructions for purging himself of contempt

It is further ORDERED that C. William Malone and Kenneth L. Saul be and hereby are appointed co-trustees of the stock of Granville Development Corporation for the purpose of implementing paragraph 16 of the decree rendered in this case on May 20, 1970 and that said trustees shall, subject to further order of this Court:

1. Assume control of said stock:

2. Recommend to the Court whether it would be best to sell said stock and invest the proceeds from the sale thereof, enter into a contract with other persons or corporations for the development of the real property of Granville Development which would provide income, or to dissolve said Corporation and transfer its real property to said trustees for the sale thereof to provide funds for investment;

3. Make payment to plaintiff for all arrearage due under the decree;

4. Make any other recommendations deemed necessary or desirable to the Court;

It is further ORDERED that Defendant surrender and deliver to said trustees all stock certificates, books, records, documents and other assets of Granville Development Corporation.

It is further ORDERED until further order of this Court, that bond of said trustees be and hereby is dispensed with.

/s/ J. W. Hill
JUDGE

APPROVED:

/s/ Harry Lewis
Attorney for Plaintiff

LUCAS, PRENDERGAST, ALBRIGHT,
GIBSON, BROWN & NEWMAN
By: *Seen but not approved* /s/ RMG
Attorneys for Defendant

APPENDIX G

COURT OF APPEALS, FRANKLIN COUNTY, OHIO

Elizabeth Jane Holland,
Plaintiff-Appellee

v.

James F. Holland,
Defendant-Appellant

No. 71-137
No. 71-84

JUDGMENT ENTRY

This day this cause was heard on the appeals of the defendant-appellant, James F. Holland, in the above captioned cases and the briefs and arguments of counsel and the record.

The Court, being fully advised in the premises, finds for the reasons stated in its decision of November 2, 1971, that the judgments of the Common Pleas Court of Franklin County, Division of Domestic Relations, should be affirmed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the judgments of the Common Pleas Court of Franklin County, Division of Domestic Relations, be, and they hereby are, affirmed.

Exceptions reserved to the defendant-appellant.

/s/ P. J. Troop
/s/ J. Holmes
/s/ J. Whiteside

APPROVED:

/s/ Harry Lewis
Attorney for Plaintiff-Appellee

LUCAS, PRENDERGAST, ALBRIGHT,
GIBSON, BROWN & NEWMAN
By: /s/ Rankin M. Gibson
by Stephen Smith with consent per phone 12-2-71
Attorneys for Defendant-Appellant